REMARKS

Claims 1, 26 and 51 have been amended. Claims 1-51 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Section 101 Rejection:

The Office Action rejected claims 26-51 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Applicants respectfully traverse this rejection. However, to expedite prosecution, claims 26 and 51 have been amended. Applicants respectfully request removal of the § 101 rejection.

Section 102(e) Rejection:

The Office Action rejected claims 1-51 under 35 U.S.C. § 102(e) as being anticipated by Kalyanavarathan, et al. (U.S. Patent 7,185,096) (hereinafter "Kalyanavarathan"). Applicants respectfully traverse this rejection in light of the following remarks.

Regarding claim 1, contrary to the Examiner's assertion, Kalyanavarathan fails to teach **a load balancer receiving a request; the load balancer selecting a node to handle the request from among a plurality of nodes associated with the load balancer and not known by the load balancer to be inactive; prior to sending the request to the selected node, the load balancer determining if the selected node is able to service the request; in response to determining that the selected node is unable to service the request, the load balancer selecting another node to handle the request from among the plurality of nodes associated with the load balancer and not known by the load balancer to be inactive.** The Examiner cites Kalyanavarathan FIG 2, steps 200, 202, 212 and 214.) However, Kalyanavarathan teaches a load balancer that relays an initial request to a selected node **without any determination as to whether or not the node is active**. The selected node services the request and returns a result with

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session information. When the load balancer receives another request related to the same session, it checks to see if the node that initially serviced the request is active (through the use of a heartbeat) and sends the request to the node, if the node is active. Kalyanavarathan teaches to determine if a selected node is active: (1) After the node has been selected and a session initiated, and (2) After an initial request has already been serviced by the node, and (3) For the node indicated by the session information. This is clearly different than the applicant's claim. Kalyanavarathan clearly does not teach, prior to sending the request to the selected node, the load balancer determining if the selected node is able to service the request. In fact, Kalyanavarathan teaches just the opposite since Kalyanavarathan's load balancer does not make any such determination until after the request has been sent to the selected node.

For at least the reasons above, the rejection of claim 1 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks also apply to claims 26 and 51.

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CONCLUSION

Applicants submit the application is in condition for allowance, and an early notice to that effect is requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-54400/RCK.

Respectfully submitted,

     /Robert C. Kowert/
Robert C. Kowert, Reg. #39,255
Attorney for Applicant(s)

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8850

Date: July 23, 2007

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